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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Spring Design, Inc., NO. C 09-05185 JW

Plaintiff,

**PRELIMINARY PRETRIAL CONFERENCE  
SCHEDULING ORDER - (JURY TRIAL)**

v.

Barnesandnoble.com, LLC,

Defendant.

/

This case is scheduled for a Preliminary Pretrial Conference on February 7, 2011. Pursuant to the Federal Rules of Civil Procedure and Local Rules of this Court, the parties conferred and duly submitted a Joint Pretrial Statement and Proposed Order. (See Docket Item No. 187.) Based on their joint submission, it appears that a trial schedule for the case can be set without the necessity of an appearance at this time. Accordingly, the Preliminary Pretrial Conference is VACATED and the parties are ordered to comply with the following schedule:

**TRIAL SCHEDULE**

Final Pretrial Conference at 11 a.m. ( <u>¶4</u> ) ( <u>≈14 days before Jury Selection</u> )	September 12, 2011
Joint Pretrial Conference Statement, <i>In Limine</i> Motions, and Proposed Jury Instructions Due ( <u>≈30 days before Final Pretrial Conference</u> )	August 12, 2011
Once the in limine binders are lodged with the Court ( <u>¶3(b)</u> ), the Court will determine whether a hearing is necessary for the motions in advance of the Final Pretrial Conference and set the hearing accordingly.	
Jury Selection	September 27, 2011 at 9 a.m.

1	<b>Jury Trial Date and Sessions<sup>1</sup></b>	
2	<b>Sessions 1-4</b>	<b>Sept. 27-30, 2011, 1 p.m. - 4 p.m.</b>
3	<b>Sessions 5-8</b>	<b>Oct. 4-7, 2011, 1 p.m. - 4 p.m.</b>
4	<b>Sessions 9-11</b>	<b>Oct. 11-13, 2011, 1 p.m. - 4 p.m.</b>
5	<b>Argue &amp; Submit</b>	<b>Oct. 14, 2011 at 1 p.m.</b>
6	<b>Jury Deliberations</b>	<b>Oct. 17-19, 2011, as needed</b>

### **Meet and Confer Requirement**

8        1. No later than 30 days prior to the Final Pretrial Conference, the parties shall meet and  
 9 confer with respect to the Joint Pretrial Conference Statement, submission of a joint list of witnesses,  
 10 a joint list of trial exhibits and a joint list of discovery material which each party intends to offer in  
 11 evidence as a part of its case-in-chief. Unless objections are made in accord with this Order, all  
 12 witnesses, exhibits and discovery material contained on the joint submission shall be deemed  
 13 admissible into evidence by stipulation.

### **Objections and Lodging Disputed Material with the Court**

14        2. If a party objects to receipt into evidence of a witness, exhibits or discovery response,  
 15 the party shall advise all opposing parties during the conference described in Paragraph 1, and  
 16 attempt to resolve the dispute. If the parties are unsuccessful in resolving the dispute, any party  
 17 wishing to object to receipt of the testimony of any witness, any exhibit or discovery response into  
 18 evidence shall lodge with Chambers a copy of the disputed material at the commencement of trial.  
 19 Attached to the submission shall be a brief statement of the objection and any response by the  
 20 proffering party. The Court will indicate on the submitted copy whether the objection is overruled  
 21 or sustained and return the material to counsel.

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22        <sup>1</sup> Jury trials are held in afternoon sessions from 1:00pm to 4:00pm, Tuesdays through  
 23 Fridays unless the Court otherwise specifies. At the Final Pretrial Conference, the Court reserves  
 24 the right to fold the afternoon sessions into morning sessions (9:00 a.m. - 12:00 p.m.) thus creating  
 25 full days for trial. The final trial schedule will be confirmed at the Final Pretrial Conference.

**Lodging Joint Pretrial Conference Statement, in Limine Motions****and Proposed Jury Instructions**

3. Pursuant to the date set forth in the Case Schedule, the parties shall file and lodge  
4 with Chambers the following:

- 5 a. Joint Pretrial Conference Statement: The parties shall file a joint pretrial  
6 statement which shall contain the following information: (1) a brief  
7 description of the substance of claims and defenses which remain to be  
8 decided; (2) a detailed statement of all the relief claimed, particularly  
9 itemizing all elements of damages claimed as well as witnesses, documents or  
10 other evidentiary material to be presented concerning the amount of those  
11 damages; (3) a plain and concise statement of all relevant facts not reasonably  
12 disputable, as well as which facts the parties will stipulate for incorporation  
13 into the trial record without the necessity of supporting testimony or exhibits;  
14 (4) a plain and concise statement of all disputed factual issues which remain  
15 to be decided; (5) a statement assessing whether all or part of the action may  
16 be presented upon an agreed statement of facts; (6) a statement of stipulations  
17 requested or proposed for pretrial or trial purposes; (7) without extended legal  
18 argument, a concise statement of each disputed point of law concerning  
19 liability or relief, citing supporting statutes and decisions; (8) a list of all  
20 witnesses likely to be called at trial; (9) a list of evidence the parties intend to  
21 present at trial through use of excerpts from depositions, from interrogatory  
22 answers, or from responses to requests for admission; and (10) any other  
23 subjects relevant to the trial of the action, or material to its just, speedy and  
24 inexpensive determination. **Counsel are directed to meet and confer in**  
25 **advance of the date for submission of pretrial material with respect to the**  
26 **pretrial conference statement.**

- b. *In Limine* Motions: Any *in limine* motions shall be filed in writing and submitted along with the Joint Final Pretrial Conference Statement. Any opposition shall be filed in writing and served no later than ten (10) days after the opening briefs have been filed and served. **Fifteen (15)** days before the date of the Final Pretrial Conference, the parties shall organize their *in limine* motions as follows:

(1) Each side shall be responsible for producing a combined folder with all of *their* *in limine* motions, oppositions to their motions (if any), and replies (if any), respectively. The motion papers shall be clearly marked and separated in one single binder. The binder shall contain a table of contents, listing each motion with a short sentence regarding the grounds for *in limine* and a short sentence regarding the opposition; all statements must be supported by proper citations to the motions. **The table of contents as well as the Motions shall also be saved on a CD in MS Word or WordPerfect format to be attached inside the binder.**

(2) Please note that this binder is not a substitute for filing the motions and related papers via ECF; it is designed for the Court to evaluate the motions. Two copies of the binder shall be delivered to the Court (by way of the Clerk's Office) no later than **fifteen (15) days before the date of the Final Pretrial Conference by 3 PM.** The parties must also bring the binder to the Final Pretrial Conference for their own references.

(3) These motions will be deemed submitted without oral argument, unless the Court orders otherwise.

c. Proposed Jury Instructions: The parties shall file their Proposed Jury Instructions thirty (30) days before the date of the Final Pretrial Conference. **The parties shall bring to the Final Pretrial Conference their Proposed Jury Instructions on a CD in MS Word or WordPerfect format.**

## Final Pretrial Conference

- 22       4. The Court will conduct a Final Pretrial Conference on the date set forth in the Case  
23 Schedule. The trial attorneys must attend the conference. At the final pretrial conference, the Court  
24 will consider issues raised in the Final Pretrial Conference Statement, motions *in limine* and discuss  
25 the procedures for trial of the case.

## **Lodging Witness Lists and Exhibit Lists**

2       5. At the Final Pretrial Conference, the parties shall lodge with Chambers the joint list  
3 of witnesses, and a joint list of exhibits. Unless otherwise ordered, all exhibits shall be in a format  
4 compatible with either the video or digital evidence presentation system utilized by the Court. The  
5 proffering party shall retain custody of all exhibits, schedules, summaries, diagrams or charts to be  
6 used at the trial.

7       6. To accommodate consideration of electronic exhibits, as the trial progresses, the  
8 parties will load images of the admitted exhibits onto a stand alone hard drive or CD or DVD in  
9 “pdf” format. The parties shall ensure that, apart from whatever technical material is necessary to  
10 operate the system, the CD, DVD or hard drive contains only the items specified in this order and  
11 nothing else. The images will be placed in a folder labeled “Admitted Exhibits” that shall contain  
12 all trial exhibits received into evidence. In addition to the exhibits, themselves, the folder shall  
13 contain a file labeled “List of Admitted Exhibits by Exhibit Number.” The “List” shall list in  
14 numerical order by Trial Exhibit Number, each admitted exhibit, along with the date of the  
15 document (where available), and a brief description of the exhibit. To the extent practicable, the  
16 “List” shall be text searchable and hyperlinked to the Exhibits, themselves. The folder shall contain  
17 a second file labeled “List of Admitted Exhibits by Date.” This second “List” shall contain the  
18 same information, except that the exhibits will be listed in chronological order, according to the date  
19 the document was prepared. The external stand alone hard drive or CD or DVD and a printed copy  
20 of the exhibit lists will be marked as exhibits and placed in evidence as demonstrative exhibits.

21       7. Before the case is submitted for decision, each party will be deemed to have had an  
22 opportunity to review the material described in the previous paragraph to ensure their accuracy.  
23 Unless a party objects before the case is submitted for decision to the judge or jury, the party will be  
24 deemed to have waived any and all objections to the submitted materials.

25        8. To accommodate review of electronic exhibits, the parties will jointly provide the  
26 jury with the following equipment: a laptop computer, the external stand alone hard drive, CD or  
27 DVD, a printer (and, if practicable, an LCD projector).

1       9. During its closing instructions, the Court will advise the jury of the form in which  
2 exhibits will be submitted to them. The jury will also be instructed that, unless impracticable, upon  
3 a juror's written request, a printed copy of any exhibit received in evidence will be provided to the  
4 jury. Before the jury retires to deliberate, the parties will provide a tutorial to the jurors on how to  
5 operate the equipment, how to view the exhibits, and how to print the exhibits if the jury wishes to  
6 do so. A written set of instructions on operations of the equipment will be sent into the jury room.

7       10. When the jury is deliberating, at least one lawyer for each side shall remain in close  
8 proximity to the courtroom. In the event of any technical problem, or if the jurors have questions  
9 about how to operate the equipment, the jurors shall pass a note to the clerk, just as with any other  
10 questions they may have. The Court will read the note to the lawyers. Those lawyers shall consult  
11 with each other and with their respective technicians, and propose to the Court how they wish to  
12 address the technical problem.

13       11. The parties shall maintain a backup laptop computer and a backup hard drive with  
14 identical images and data at the courthouse such that, in the event of a technical problem that cannot  
15 be quickly and easily remedied, the equipment can be replaced.

16       12. Unless the Court orders otherwise for good cause shown, the expense of the  
17 equipment and the costs of preparation of the Lists and Exhibits will be shared equally among the  
18 parties.

19       13. This Standing Order also applies to cases tried to the Court sitting without a jury,  
20 except that paragraphs 8-11 do not apply.

21       14. The parties are ordered to meet and confer in advance of trial to establish a procedure  
22 for complying with this Order with respect to electronic exhibits.

23       15. Upon request, in non-complex cases the Court will excuse the parties from using  
24 electronic formatted documents. In that event on the first day of trial, the parties shall submit  
25 exhibits as follows:

- 26           a. A copy for the trial judge;  
27           b. A copy for the witness stand.

- c. No duplicates of a document shall be submitted, unless the duplicate copy has independent evidentiary value to prove some disputed issue of material fact (e.g., date stamp to prove receipt on a particular date, where date of receipt is a disputed issue of a material fact).

## **Jury Trial Schedule**

6       16. The time allowed for trial shall be divided equally between the plaintiff's side and the  
7 defendant's side. Co-parties are ordered to meet, confer and agree to an allocation among  
8 themselves. A party may spend its allocated time presenting its own case or on cross-examination of  
9 witnesses called by other parties or for presentation of a counterclaim. When a party's allocated time  
10 period has expired, unless otherwise ordered for good cause shown, no further time will be allowed  
11 to that party if it would interfere with the ability of the opposing party to present its case.

## **Trial Procedure**

13        17. In opening statements, counsel shall not express personal knowledge or opinion  
14 concerning any matter in issue.

15        18. Counsel must question witnesses from the podium, using the microphone. Without  
16 requesting permission, counsel may approach witnesses for any proper purposes.

19. Address all remarks to the Court, not to opposing counsel.

18        20. Refer to all persons, including witnesses, other counsel and the parties by their  
19 surnames and not by their first or given names.

20           21. In examining a witness, counsel shall not repeat or echo the answer given by the  
21 witness.

22. Counsel must stand when making an objection.

23       23. Conferences at the bench or sidebar are not favored by the Court. Any sidebar  
24 conferences which are allowed will be off the record. If any counsel wishes to place matters on the  
25 record, he or she may so request, and the Court will make a responsive order.

1       24. Counsel have full responsibility to arrange for the appearance of witnesses during the  
2 presentation of their case so as to eliminate delay caused by waiting for witnesses who have been  
3 placed on call by counsel.

4       25. Unless an agreement to the contrary is entered into by opposing counsel, all nonparty  
5 or nonexpert witnesses will be excluded from the courtroom when not testifying. When a witness  
6 has completed his or her testimony, the witness is excused unless counsel indicates that he or she  
7 wishes the witness to remain subject to being recalled. Any witness who has been excused from  
8 further testimony may remain as a spectator. It will be the responsibility of counsel to make an  
9 announcement at the time the witness steps down that he or she should remain in the environs of the  
10 Court for a reasonable time to permit such counsel an opportunity to secure and serve a subpoena  
11 upon the witness and assume responsibility for his or her per diem and other expenses as provided  
12 by governing rule or statute.

13       26. Counsel shall admonish all persons at counsel table that gestures, facial expressions,  
14 audible comments, or the like, as manifestations of approval or disapproval during the testimony of  
15 witnesses, or at any other time, are prohibited.

16       27. Witness examination shall consist of direct examination, cross-examination and re-  
17 direct examination. No recross-examination will be allowed without prior approval of the Court  
18 specifically indicating the area for recross-examination. When there are multiple defense counsel,  
19 they are directed to confer and designate to the Court the sequence in which they wish to be  
20 recognized during trial for purposes of presenting opening statements and conducting cross-  
21 examination of witnesses. If one counsel conducts the direct examination of a witness, that same  
22 counsel must make objections when the witness is cross-examined. Counsel who will conduct the  
23 cross-examination should object while the witness is on direct.

24       28. After the commencement of trial testimony, upon request of co-parties, any objection,  
25 motion or other application for relief made by any co-party, orally or in writing, shall be deemed to  
26 be adopted and joined in by every other co-party, without announcement by counsel to that effect,  
27 and the rulings of the Court shall be deemed applicable to each party unless otherwise stated at the  
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1 time the ruling is made. Accordingly, it shall be regarded as unnecessary and improper for counsel  
2 to rise to "join in" an objection or motion. Rather, counsel should rise to be heard only for the  
3 purpose of expressly opting out of an objection or motion if that is his or her position.

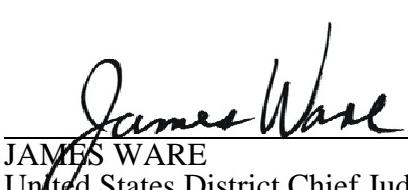
4 29. Counsel are directed to deliver to opposing counsel at the end of each trial day (if not  
5 earlier) a list of witnesses counsel anticipates calling the next trial day.

6 30. Counsel calling a non-client witness to testify should have no further discussions with  
7 that witness concerning the case or any aspect of his or her testimony after the witness has been  
8 tendered for cross-examination and until such time as the witness has been tendered back for redirect  
9 examination. At all other times, within the bounds of governing ethics and the law, counsel may  
10 engage in discussions with witnesses during trial.

11 31. Any time taken away from presentation of evidence to the trier of fact due to, for  
12 example, lengthy legal motions made during the time allocated to the presentation of evidence, or  
13 delays in the commencement of proceedings due to circumstances within the control of counsel, will  
14 be deducted from the time allocated for the presentation of evidence. Upon timely application based  
15 upon good cause, the Court may relieve a party of its stipulation to the agreed schedule.

16 32. It is the practice of the Court periodically to inform counsel of the Court's record of  
17 how much time each side has remaining for the presentation of evidence based upon the stipulated  
18 trial schedule.

19  
20 Dated: September 15, 2010  
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JAMES WARE  
United States District Chief Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 David J. Ruderman davidruderman@quinnemanuel.com  
Elizabeth J. White bwhite@fenwick.com  
3 J. David Hadden dhadden@fenwick.com  
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7

8 **Dated: September 15, 2010**

**Richard W. Wieking, Clerk**

9  
10 By: /s/ JW Chambers  
11 Elizabeth Garcia  
12 Courtroom Deputy  
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